



August 7, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-2984

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137938.

The Texas Department of Criminal Justice (the "department") received a written request for records pertaining to a polygraph examination taken by a named inmate. You contend that the requested polygraph records are excepted from disclosure under various sections of chapter 552 of the Government Code, including sections 552.101 and 552.131.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 1703.306 of the Occupations Code governs the release of polygraph information and provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee *or any other person specifically designated in writing by the examinee*;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or control a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Texas Occupations Code § 1703.306 (formerly V.T.C.S. art. 4413(29cc) § 19A). Although this provision prohibits the release of polygraph information to anyone other than those individuals listed in paragraph (a), in this instance, the examinee/inmate has authorized the department to release the polygraph information to the requestor. We conclude, therefore, that the requestor has a special right of access to the polygraph information pursuant to section 1703.306(a)(1) of the Occupations Code. Consequently, the department may not withhold the polygraph information from the current requestor pursuant to any of the exceptions you have raised.

You have also submitted to this office as responsive to the request two pieces of correspondence between two inmates that were used by the polygraph examiner during the examination of the inmate. Because these two letters do not consist of "information acquired from a polygraph examination," the release of these documents is not governed by section 1703.306. We therefore must address whether these letters are excepted from public disclosure by one of the exceptions you have raised. Section 552.131(a), relating to inmates of the department, provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with [the department] is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

(2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

(3) the offense for which the inmate was convicted or the judgment and sentence for that offense;

(4) the county and court in which the inmate was convicted;

(5) the inmate's earliest or latest possible release dates;

(6) the inmate's parole date or earliest possible parole date;

(7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.131 is explicitly made subject to section 552.029. However, after reviewing the two pieces of correspondence you submitted to our office, we conclude that none of the information contained therein is subject to release under section 552.029. Accordingly, the department must withhold the correspondence from the requestor pursuant to section 552.131 of the Government Code.

In summary, because the inmate that took part in the polygraph examination has authorized the requestor to obtain a copy of the polygraph report, the requestor has a special right of access to that document pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold from the requestor the two pieces of the inmate's correspondence pursuant to section 552.131 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

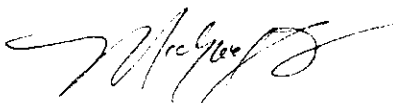
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/ljp

Ref: ID# 137938

Encl. Submitted documents

cc: Ms. Terri Lewis
P.O. Box 25
Seymour, Texas 76380
(w/o enclosures)